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January 25, 1993

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Westerville Radio Partners
BPH-91123OMF
Channel 280A
Westerville, Ohio

Dear Ms. Searcy:

Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and four (4) copies of its supplement to petition to deny and dismiss the application of Westerville Radio Partners a/k/a Kyong Ja Matchak.

Please contact the undersigned in our Washington, D.C. office.

Respectfully submitted,

McNAIR LAW FIRM, P.A.

By:


Stephen T. Yelverton

Enclosure

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DIVISION

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUN 25 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In Re Application of:)
WESTERVILLE RADIO PARTNERS) File No. BPH-911230MF
a/k/a KYONG JA MATCHAK)
Application for Construction)
Permit for a New FM station,)
Channel 280A, Westerville, Ohio)

To: Chief, Audio Services
Division

SUPPLEMENT TO PETITION TO DENY AND DISMISS THE APPLICATION
OF WESTERVILLE RADIO PARTNERS A/K/A KYONG JA MATCHAK

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Sections 73.3584(a) and 73.3587 of the Commission's Rules, hereby submits this supplement to its petition to deny and dismiss the application of Westerville Radio Partners a/k/a Kyong Ja Matchak ("WRP"). On March 26, 1992, ORA filed a petition to deny and dismiss the application of WRP. On July 29, 1992, ORA filed a supplement to its petition to report the release of a new Commission decision which is relevant to the issues raised by ORA. It is filing this supplement to report the release of another new Commission decision which is relevant to the issues raised in the petition. In support of its supplement, ORA submits the following comments.

In its March 26, 1992, petition to deny and dismiss, ORA contended that the application of WRP must be dismissed with prejudice because it proposes a short-spacing of 6.84 km. In a comparative hearing, a short-spaced application cannot be considered if other applicants propose fully-spaced and technically

suitable tower sites. See, e.g., North Texas Media, Inc. v. FCC, 778 F.2d 28, 34 (D.C. Cir. 1985). ORA and one other applicant in this proceeding propose such acceptable tower sites and no party has contested their availability and suitability.

The applications in this proceeding were filed for a channel which was allocated years ago. The allotment is now vacant because the license was deleted as a result of denial of the renewal application. WRP and the other short-spaced applicants are proposing the use of the existing tower of the previous licensee. That station was short-spaced to Station WTTF-FM, Tiffin, Ohio, but was "grandfathered" under Section 73.213. On September 11, 1992, Station WTTF-FM also filed an informal objection to WRP's attempt to perpetuate the short-spacing caused by the now deleted station.

WRP proposes the use of a directional antenna under Section 73.215 in order to utilize the existing tower of the previous licensee. In opposing ORA's petition, WRP has suggested that the directional antenna provisions of Section 73.215 can be used to perpetuate any "grandfathered" short-spacing which was caused by a deleted station. See, WRP oppositions, filed April 8, and August 31, 1992.

In John M. Saloy, FCC 92-565, para. 17, released January 8, 1993, the Commission directly addressed this issue. Therein, it held that Section 73.213 applies only to existing short-spaced stations. When an allotment becomes vacant, Section 73.213 is no

longer relevant or applicable. Moreover, the Commission, at para. 18, held that directional antennas, pursuant to section 73.215, could not be used to perpetuate "grandfathering" caused by a deleted station.

The Commission, at paras. 15-16, further held that it is established practice to remove vacant allotments which do not meet the minimum spacing requirements, whenever the opportunity arises. According to the Commission, short-spaced channels are inefficient and the public interest is best served by not allowing them.

However, the vacant Westerville allotment does not have to be deleted because fully-spaced and technically suitable tower sites exist and are available. The problem here is that WRP and other applicants insist on using an existing tower which is 6.84 km. short-spaced. These applicants insist that this use is permissible because the previous Westerville licensee, with which they have no privity, was "grandfathered" under Section 73.213. However, in view of John M. Salov, that rationalization has no merit and must be rejected.

The holding of John M. Salov is also consistent with other Commission precedent which is applicable to this proceeding. In MM Docket No. 87-121, 6 FCC Rcd 5356, 5360, para. 27 (1991), the Commission ruled that directional antenna applications would be

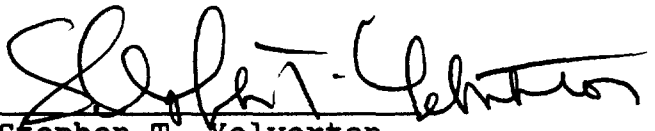
~~rejected under section 73.215 - unless the applicant can demonstrate that the use of the existing tower is necessary for the efficient use of the spectrum.~~

only in cases of necessity. WRP, of course, cannot make such a showing.

WHEREFORE, in view of the foregoing, the application of WRP is impermissibly short-spaced and must accordingly be dismissed with prejudice.

Respectfully submitted,

MCNAIR LAW FIRM, P.A.

By: 
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January 25, 1993

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CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney in the McNair Law Firm, P.A., do hereby certify that on this 25th day of January, 1993, I have caused to be hand-delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Supplement to Deny and Dismiss the Application of Westerville Radio Partners a/k/a Kyong Ja Matchak" to the following:

Dennis Williams, Chief*
FM Branch
Room 332
Federal Communications Commission
Washington, D.C. 20554

William D. Freedman, Esquire
Gurman, Kurtis, Blask & Freedman, Chartered
1400 Sixteenth Street, N.W.
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Stephen T. Yelverton

*Hand Delivery